



DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Trademark Trial and Appeal Board (TTAB) Actions

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of information collection; request for comment.

SUMMARY: The United States Patent and Trademark Office (USPTO), as required by the Paperwork Reduction Act of 1995, invites comments on the extension and revision of an existing information collection: 0651-0040 (Trademark Trial and Appeal Board (TTAB) Actions). The purpose of this notice is to allow 60 days for public comment preceding submission of the information collection to OMB.

DATES: To ensure consideration, comments regarding this information collection must be received on or before [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested persons are invited to submit written comments by any of the following methods. Do not submit Confidential Business Information or otherwise sensitive or protected information.

- *Federal Rulemaking Portal:* <http://www.regulations.gov>.
- *Mail:* Justin Isaac, Information Collection Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to LaToya Brown, United States Patent and Trademark Office, P.O. Box

1450, Alexandria, VA 22313–1450; by telephone at 571–272-4283; or by email to LaToya.Brown@uspto.gov with “0651–0040 comment” in the subject line. Additional information about this information collection is also available at <http://www.reginfo.gov> under “Information Collection Review.”

SUPPLEMENTARY INFORMATION:

I. Abstract

The USPTO administers the Trademark Act of 1946, 15 U.S.C. 1051 et seq., as amended, which provides for the Federal registration of trademarks, service marks, collective marks and certification marks. Individuals and businesses that use or intend to use such marks in commerce may file an application to register their marks with the USPTO.

Section 13 of the Trademark Act, 15 U.S.C. 1063, allows individuals and entities who believe that they would be damaged by the registration of a mark to file an opposition, or an extension of time to file an opposition, to the registration of the mark. Section 14 of the Trademark Act, 15 U.S.C. 1064, allows individuals and entities to file a petition to cancel a registration of a mark. Section 20 of the Trademark Act, 15 U.S.C. 1070, allows individuals and entities to appeal any final decision of the examiner in charge of the registration of marks or a final decision by an examiner in an ex parte expungement proceeding or ex parte reexamination proceeding.

The USPTO administers certain provisions of the Trademark Act of 1946 through the regulations at 37 CFR part 2, which contains the various rules that govern the filings identified above and other submissions filed in connection with inter partes and ex parte proceedings. These petitions, notices, extensions, and additional papers are filed with the Trademark Trial and Appeal Board (TTAB), an administrative tribunal empowered to determine the right to register and subsequently determine the validity of a trademark.

The information in this collection must be submitted electronically through the TTAB's electronic filing system. If applicants or entities wish to submit the petitions, notices, extensions, and additional papers in inter partes and ex parte cases, they may use the forms provided through the TTAB's electronic filing system.

This information collection includes the items needed for individuals or entities to file inter partes and ex parte proceedings regarding federal registration of their trademarks or service marks. Information is collected in view of the provisions of the Trademark Act of 1946. The responses in this information collection are a matter of public record, and are used by the public for a variety of private business purposes related to establishing and enforcing trademark rights. This information is important to the public, as both common law trademark owners and federal trademark registrants must actively protect their own rights.

II. Method of Collection

Items in this information collection must be submitted through the TTAB's electronic filing system. However, in certain circumstances, information may be submitted in paper form by mail or hand delivery.

III. Data

OMB Control Number: 0651–0040.

Forms:

- PTO 2120 (Notice of Opposition)
- PTO 2151 (Papers in Inter Partes Cases)
- PTO 2153 (Request for Extension of Time to File an Opposition)
- PTO 2188 (Petition for Cancellation)
- PTO 2189 (Ex Parte Appeal General Filing)

- PTO 2190 (Notice of Appeal)

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: Private sector.

Respondent's Obligation: Required to obtain or retain benefits.

Estimated Number of Annual Respondents: 41,300 respondents.

Estimated Number of Annual Responses: 76,650 responses.

Estimated Time per Response: The USPTO estimates that it will take the public from 10 minutes (0.17 hours) to 21 hours to complete, depending on the complexity of the situation and item, to gather the necessary information, prepare the appropriate documents, and submit them to the USPTO.

Estimated Total Annual Respondent Burden Hours: 1,038,747 hours.

Estimated Total Annual Respondent Hourly Cost Burden: \$303,314,124.

Table 1: Total Burden Hours and Hourly Costs to Private Sector Respondents

Item No.	Item	Estimated Annual Respondents (a)	Estimated Responses per Respondent (b)	Estimated Annual Responses (a) X (b) = (c)	Estimated Time for Response (hours) (d)	Estimated Burden (hour/year) (c) x (d) = (e)	Rate ¹ (\$/hour) (f)	Estimated Annual Respondent Cost Burden (e) x (f) = (g)
1	Petition to Cancel PTO-2188	2,300	1	2,300	18	41,400	\$292	\$12,088,800
2	Notice of Opposition PTO-2120	6,800	1	6,800	18	122,400	\$292	\$35,740,800
3	Request for Extension of Time to File an Opposition PTO-2153	10,000	1.75	17,500	0.3	5,250	\$292	\$1,533,000

¹ The hourly rate for attorneys is \$435, published in the 2021 Report of the Economic Survey from the Law Practice Management Committee of the American Intellectual Property Law Association (AIPLA). The hourly rate for paraprofessional/ paralegals is \$149 as published in the 2020 Utilization and Compensation Survey by the National Association of Legal Assistants (NALA). After calculating the average of these rates, the USPTO estimates that the hourly rate will be \$292.

Item No.	Item	Estimated Annual Respondents (a)	Estimated Responses per Respondent (b)	Estimated Annual Responses (a) X (b) = (c)	Estimated Time for Response (hours) (d)	Estimated Burden (hour/year) (c) x (d) = (e)	Rate ¹ (\$/hour) (f)	Estimated Annual Respondent Cost Burden (e) x (f) = (g)
4	Submissions in Inter Partes Cases <ul style="list-style-type: none"> • Answers • Amendments to Pleadings • Amendment of Application or Registration During Proceeding • Motions (such as consent motions, motions to extend, motions to suspend, etc.) • Evidence • Briefs • Oral hearing requests • Surrender of Registration • Abandonment of Application • Documents Related to Concurrent Use Applications • Notice of Intent to Appeal a TTAB decision PTO-2151	18,200	2.25	40,950	21	859,950	\$292	\$251,105,400
5	Notice of Appeal PTO-2190	3,400	1	3,400	1.20	4,080	\$292	\$1,191,360
6	Appeal Briefs PTO-2189	600	1	600	8	4,800	\$292	\$1,401,600
7	Miscellaneous Ex Parte Submissions <ul style="list-style-type: none"> • Requests to extend time to file Appeal Briefs • Oral hearing requests PTO-2189	Same as line 5	1.50	5,100	0.17	867	\$292	\$253,164
	Totals	41,300		76,650		1,038,747		\$303,314,124

Estimated Total Annual Respondent Non-hourly Cost Burden: \$9,080,047.

There are no capital start-up, maintenance, or record keeping costs associated with this information collection. However, the USPTO estimates that the total annual (non-hour) cost burden for this information collection, in the form of, filing fees (\$9,079,500) and postage (\$547) is \$9,080,047.

Filing Fees

The 15 filing fees associated with this information collection are listed in the table below.

Table 2: Filing Fees

Item No.	Fee Code	Item	Estimated Annual Responses (a)	Filing fee (\$) (b)	Total Non-hour Cost Burden (\$) (a) X (b) = (c)
1	6401	Petition to Cancel (Paper Submission)	5	\$700	\$3,500
1	7401	Petition to Cancel	2,295	\$600	\$1,377,000
2	6402	Notice of Opposition (Paper Submission)	20	\$700	\$14,000
2	7402	Notice of Opposition	6,780	\$600	\$4,068,000
3	6405	Request for Extension of Time to File an Opposition under §2.102(c)(3) (Paper Submission)	5	\$500	\$2,500
3	7405	Request for Extension of Time to File an Opposition under §2.102(c)(3)	2,400	\$400	\$960,000
3	6404	Request for Extension of Time to File an Opposition under §2.102(c)(1)(ii) or (c)(2) (Paper Submission)	5	\$400	\$2,000
3	7404	Request for Extension of Time to File an Opposition under §2.102(c)(1)(ii) or (c)(2)	8,345	\$200	\$1,669,000
5	6403	Ex Parte Appeal to the Trademark Trial and Appeal Board Filed (Paper Submission)	10	\$325	\$3,250
5	7403	Ex Parte Appeal to the Trademark Trial and Appeal Board	3,390	\$225	\$762,750
6	6406	Brief in an Ex Parte Appeal to the Board, per Class (Paper Submission)	5	\$300	\$1,500
6	7406	Electronic Brief in an Ex Parte Appeal to the Board, per Class	595	\$200	\$119,000
7	6407	Second or Subsequent Request for an Extension of Time to File an Appeal Brief, per Application (Paper Submission)	5	\$200	\$1,000
7	7407	Electronic Second or Subsequent Request for an Extension of Time to File an Appeal Brief, per Application	335	\$100	\$33,500
7	7408	Request for an Oral Hearing	125	\$500	\$62,500
Total		---	24,320	---	\$9,079,500

Postage Costs

Express or first-class mail through the United States Postal Service or hand delivery to the TTAB is only available under extraordinary circumstances. The USPTO estimates that the average postage cost for a mailed submission, using a Priority Mail flat rate legal envelope, will be \$9.95 and that approximately 55 submissions will be mailed to the USPTO per year. Therefore, the USPTO estimates that postage costs in this information collection will be \$547.

IV. Request for Comments

The USPTO is soliciting public comments to:

- (a) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- (b) Evaluate the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- (c) Enhance the quality, utility, and clarity of the information to be collected; and
- (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

All comments submitted in response to this notice are a matter of public record.

USPTO will include or summarize each comment in the request to OMB to approve this information collection. Before including an address, phone number, email address, or other personally identifiable information (PII) in a comment, be aware that the entire

comment – including PII – may be made publicly available at any time. While you may ask in your comment to withhold PII from public view, USPTO cannot guarantee that it will be able to do so.

Justin Isaac,

Information Collections Officer,

Office of the Chief Administrative Officer,

United States Patent and Trademark Office.

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